ces" was virtually sterile land and affirmed the Award of the Collector of Land Revenue.

In our view the Appeals Board had erred in law in coming to the conclusion that the ascertainment of the market value of the property should be made on the basis of its market price as a piece of land occupied by Her Majesty's Forces. Since 1975 Her Majesty's Forces had ceased to occupy any land in Singapore. Accordingly, this alternative basis for evaluating the market value of such a property under section 33(5)(e) of the Act was no longer available since its foundation in fact had totally disappeared since 1975.

In these circumstances, the market value of the property as at November 30, 1973 within the meaning of sections 33(1)(a) and 33(5)(e) should be assessed on the basis of its existing use. The Appellant was a *bona fide* purchaser of the property in July 1971. He bought the property on the basis of its existing and lawful use as a store for pepper. Seeing that the Appellant's purchase had taken place at a time sufficiently proximate to November 30, 1973 we are of the view that the Award should have been fixed at $400,000.00. The appeal is allowed with costs here and below. The Award is increased to $400,000.00.

Appeal allowed.

Solicitors: *Lee Woo & Partners; Rodyk & Davidson.*

IN THE MATTER OF LEE WAH CANE FURNITURE PTE. LTD.

[O.C.J. (Chua J.) January 25, 1984]
[Singapore – Companies Winding Up No. 53 of 1983]

Company Law – Examination of legal adviser of company regarding affairs of company – Application by Liquidators of Company – Whether allowed – Companies Act (Cap.185), s. 249(1).

Legal Profession – Professional privilege – Solicitor acting as legal adviser to company – Asst. Registrar's order that he be examined on oath concerning affairs of Company – Order discharged by High Court – Companies Act (Cap. 285), s. 249(1) – Evidence Act (Cap.5), s. 128(1).

Company Law – Legal adviser for company – Whether he may be examined on oath concerning affairs of company – Scope of Companies Act (Cap.285), s. 249(1).

On the application of the Liquidators of Lee Wah Cane Furniture Pte. Ltd. (the Company) the Asst. Registrar made an Order that Ronald Lee, a legal adviser for the company, may be examined on oath concerning the affairs of the company and produce all books and papers in his custody or power relating to the company.

Exception was taken to the order for examination under section 249(1) and is based on 3 grounds. First, privilege of professional communication; second, the liquidators are contemplating instituting other legal proceedings and are seeking on the examination of Ronald Lee to obtain evidence; third, Ronald Lee has already assisted the liquidators within his capacity and within the bounds of professional privilege.

A motion was made on behalf of Ronald Lee for an order that the Asst. Registrar's order made under section 249 of the Companies Act against Ronald Lee be discharged or varied or modified.

Held: on the first ground alone the order of the Asst. Registrar should be discharged. The liquidators were also attempting to use this section in an improper way as a means of aiding them in other litigations. Ronald Lee has assisted the liquidators within his capacity and within bounds of professional privilege;

(2) the liquidator must therefore pay to Ronald Lee his costs of this application.

Cases referred to:

(1) *Re Maville Hose Ltd.* [1938] 3 All E.R. 621.
(2) *Re Rolls Razor Ltd. (No. 2)* [1969] 3 All E.R. 1386.
(3) *Re North Australian Territory Company* (1890) 45 Ch.D. 87.

MOTION.

G. Raman for Ronald Lee.
Wong Meng Meng for the liquidators.

Cur. Adv. Vult.

Chua J.: This is a Motion made on behalf of Ronald Lee Kum Seng (Ronald Lee) for an order that the Asst. Registrar's order made under Section 249 of the Companies Act against Ronald Lee be discharged or varied or modified.

The Asst. Registrar's order, made on the application of the Liquidators of Lee Wah Cane Furniture Pte. Ltd., (the Company) was that Ronald Lee may be examined on oath concerning the promotion, formation, trade dealings, affairs or property of the Company, and to produce all books and papers in his custody or power relating to the Company.

Section 249(1) of the Companies Act provides as follows:

"249-(1) The Court may summon before it any officer of the company or person known or suspected to have in his

possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company."

Ronald Lee is an advocate and solicitor practising under the name and style of Messrs. Ronald Lee & Co in Singapore. In his affidavit Ronald Lee said that, in the course of his practice, he acted as an advocate and solicitor or otherwise legal adviser for the Company since its incorporation on March 31, 1979. He was also one of the legal advisers in Singapore to InterLee (Holdings) Ltd. (InterLee) a company incorporated in Hong Kong and of which the Company is a wholly-owned subsidiary.

Ronald Lee further said that of his own volition, when he discovered on his return from overseas that the Company was under receivership, he called on Shook Lin & Bok, the solicitors for the receivers of the Company, and as a result of their conversation he allowed Shook Lin & Bok absolute liberty and access to inspect at his office all files, documents and papers relating to the Company. However, Shook Lin & Bok requested for a letter and certain documents relating to another company which he refused because they were either unrelated to the Company or belonged to another firm. Shook Lin & Bok also asked for the files relating to a property known as No. 10-C, Jervois Road, Singapore, which they alleged belonged to the Company. He refused to forward the files but granted them the liberty to inspect the files and make copies of the documents therein.

Ronald Lee said that he had given his fullest co-operation and assistance to Shook Lin & Bok and the receivers and liquidators on all legal matters within his knowledge concerning the promotion, formation, trade dealings, affairs or property of the Company. He had also allowed them to inspect all books and files and papers in his custody or power relating to the Company. All matters that the liquidators wish to know from him or documents they want him to produce for their inspection had already been disclosed or inspected by Shook Lin & Bok.

Ronald Lee maintained that the liquidators took out the order against him with the motive to compel him to disclose to the Court matters concerning the directors, Lee Peng Fong and Lee Tong Fook's, dealings in InterLee and in its subsidiaries and also matters in connection with the sale of the property, No. 10-C, Jervois Road.

Ronald Lee said that as regards the disclosure of matters concerning the two directors' dealings outside their capacity as officers or otherwise agents of the Company, he was under a legal obligation to respect the confidence reposed in him and not disclose the communications which have been made to him in professional confidence, that is, in the course and for the purpose of his employment by or on behalf of his clients, or to state the contents of or conditions of documents with which he had become acquainted in the course of his professional employment, without the consent of his clients. This obligation is clearly spelt out in Section 128(1) of the Evidence Act. He had not been expressly instructed nor authorised by the said directors to disclose any professional communications outside the ambit of dealings in their capacity as directors of the Company and he could not in law be compelled to be examined on oath.

As regards information concerning the sale of No. 10-C, Jervois Road, Ronald Lee said that there were two reasons why he should not be compelled to disclose information to the Court. First, Shook Lin & Bok had full inspection of his file on the sale and he had written various letters to Shook Lin & Bok providing all information to answer their queries. But, all other information in the form of communications on the sale of the property between himself and his clients (Lee Peng Fong, his wife Choy Kum Kiew, the vendors) were confidential and privileged from disclosure. Secondly, it was very likely that the liquidators were contemplating legal proceedings to set aside as fraudulent the sale of the property. As his clients might be the defendants of a contemplated litigation in which he might be an important witness for the defence to such action, there were legal authorities which prohibit the liquidators, the likely plaintiffs, from having the advantage of scrutinising the defendants' evidence in advance.

The following facts are deposed to by Peter Chi Man Kwong, one of the two liquidators, when the liquidators applied for an order under Section 249 of the Companies Act that certain persons, including Ronald Lee, may be examined:

1. Prior to the appointment of Peter Chi Man Kwong and Robin Ian Rawlings as liquidators,

they were appointed receivers and managers by an order of Court on the application of Midland International Trade Services (U.K.) Ltd, the plaintiffs in Suit No. 1003 of 1983. The plaintiffs applied for and obtained the following orders:–

(a) an order restraining the Company and two of its directors, Lee Peng Fong and Richard Lee Tong Fook, from selling, disposing, pledging or transferring their assets within the jurisdiction of the court;

(b) an order for the arrest of Lee Peng Fong and Richard Lee Tong Fook;

(c) an order empowering the plaintiffs to enter the premises known as No. 14-C, Jervois Close, Singapore.

2. On appointment as receivers and managers they discovered the following:–

(a) The Company is owing a total of approximately $51 million to 23 banks. On enquiries they discovered that most of the banks did not know of the loans given by the others;

(b) All the accounting records and books are missing. Consequently they are not in the position to discover the manner in which the loan of $51 million from the banks has been utilised;

(c) The Chairman Lee Peng Fong, the Managing Director Richard Lee (son of the Chairman), the General Manager Daniel Yap Neng Hua and the Company Secretary Miss Yap Mee Mee cannot be located and are believed to be out of the country;

(d) There have been many companies set up in the United States and Hong Kong. The Hong Kong companies in particular require investigations as they are obviously nominee companies. There is very little known about the Hong Kong companies as the Registry of Companies in Hong Kong allows companies to be registered as directors. It is not possible, on the basis of the searches, to establish factually the persons behind the companies or the purpose of the companies;

(e) Various highly questionable transactions involving sales of rattan/furniture to foreign companies involving Hong Kong companies;

(f) The ownerships of various business or property are in doubt. There are several properties, namely No. 3, Jervois Close, No. 10-C, Jervois Road, No. 14-C, Jervois Road, No. 17 Fernhill Road, which are in the name of some of the directors of the companies. It is however believed that the funds for the purchase of all or some of these properties come from the Company. In particular No. 10-C, Jervois Road was to have been transferred to the Company in accordance with a resolution involving the transfer of shares to the directors. However this transfer was not effected and the property remains in the name of Lee Peng Fong and his wife, Choy Kum Kiew.

3. The liquidators believe that Ronald Lee will be able to assist them in that he would be capable of giving information regarding the promotion, trade dealings, affairs or property of the Company. He was the solicitor acting for the Company and for the directors. He is also the brother-in-law of Frederick Lee, the son of the Chairman Lee Peng Fong. Frederick Lee married Ronald Lee's sister.

Exception is taken to the order for examination under section 249(1) and is based on three grounds: First, privilege of professional communication; second, the liquidators are contemplating instituting other legal proceedings and are seeking on the examination of Ronald Lee to obtain evidence; third, Ronald Lee has already assisted the liquidators within his capacity and within the bounds of professional privilege.

Section 128(1) of the Evidence Act (Reprint) provides as follows:

"128(1) No advocate or solicitor shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate or solicitor by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure –

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any advocate or solicitor in the course of his employment as such showing that any

crime or fraud has been committed since the commencement of his employment."

Counsel for Ronald Lee submits that the proviso of Section 128(1) has not been invoked by the liquidators nor does it apply. He says that Ronald Lee was not an officer of the Company and was at all material times solicitor of the Company. As solicitor he does not know the intimate affairs of the Company or the directors. He was not involved in the day to day transactions of the company.

Counsel for the liquidators has no answer to the first ground. All he can say is that section 249(1) is very far-reaching and that a solicitor is an officer of the Court and he should assist the liquidator who is also an officer of the Court. Counsel for the liquidators also says that professional privilege alone is not sufficient to set aside the order for examination. He submits that the correct procedure is for Ronald Lee to attend the examination and to refuse to answer questions which he thinks ought not to be asked and it is up to the examining Judge or Registrar to make a ruling as to whether the objection should be upheld or overruled.

In my view that cannot be the right course. It seems to me that the right course is what Ronald Lee has done – to come to the Court now to test the validity of the order and ask that the order should be discharged if it is an improper one. (See *Re Maville Hose, Ltd.*[1] *Re Rolls Razor, Ltd. (No. 2)*[2].

Bowen L.J. in *Re North Australian Territory Company*,[3] when dealing with the nature of section 115 of the English Companies Act, 1862, (which was similar to our section 249) observed (p 93):

"In the first place, it must be observed that it is an extraordinary section. It is an extraordinary power; it is a power of an inquisitorial kind which enables the Court to direct to be examined – not merely before itself, but before the examiner appointed by the Court – some third person who is no party to a litigation. That is an inquisitorial power, which may work with great severity against third persons, and it seems to me to be obvious that such a section ought to be used with the greatest care, so as not unnecessarily to put in motion the machinery of justice when it is not wanted, or to put it in motion at a stage when it is not clear that it is wanted, and certainly not to put it in motion if unnecessary mischief is going to be done or hardship inflicted upon the third person who is called upon to appear and give information."

Megarry J. said in *Re Rolls Razor Ltd. (No. 2)* about the nature of the process under section 268 of the English Companies Act, 1948, (which is similar to our section 249) in these words (p. 1396):

"The process under s.268 is needed because of the difficulty in which the liquidator in an insolvent company is necessarily placed. He usually comes as a stranger to the affairs of the company which has sunk to its financial doom. In that process, it may well be that some of those concerned in the management of the company, and others as well, have been guilty of some misconduct or impropriety which is of relevance to the liquidation. Even those who are wholly innocent of any wrongdoing may have motives for concealing what was done. In any case, there are almost certain to be many transactions which are difficult to discover or to understand merely from the books and papers of the company. Accordingly, the legislature has provided this extraordinary process so as to enable the requisite information to be obtained. The examinees are not in any ordinary sense witnesses, and the ordinary standards of procedure do not apply. There is here an extraordinary and secret mode of obtaining information necessary for the proper conduct of the winding-up. The process, borrowed from the law of bankruptcy, can only be described as being sui generis.

In such a process, it seems to me that the court must give great weight to the views of the liquidator, with his detailed knowledge of the problems that exist in relation to the affairs of the company and the information that is required. At the same time, the court must be astute to prevent any oppressive, vexatious or unfair use of this extraordinary process, especially as the liquidator's report ... is kept hidden from the examinees. Indeed, in *Re Greys Brewery Co.* Chitty J. said that the section had been called the Star Chamber clause. These circumstances seem to me to point at least to the desirability of the examinees having the right to have the unfettered discretion of the judge brought to bear on any exercise of this extraordinary jurisdiction."

He further said (p. 1399):

"I can see nothing in the authorities to preclude me from reaching the conclusion which I should have reached without their aid on this part of the case; so far as they go, I think that either they support my conclusion (or are at least consonant with it) or else they are clearly distinguishable. In my judgment: (1) if an order is made by the registrar under s.268, any person against whom the order is made has a right to apply to the judge to modify or discharge that order; (ii) a motion to discharge or vary the registrar's order is the appropriate method of procedure; (iii) on the hearing of the motion the discretion to be exercised is that of the judge, unfettered in any way by the decision of the registrar; and (iv) in exercising that discretion, the judge (like the registrar) should give great weight to the views expressed by the liquidator, but should also be astute to prevent the section being used in a manner that is oppressive, vexatious or unfair."

I am of the view that on the first ground alone the order of the Asst. Registrar should be discharg-

ed. There are, however, in this case further grounds. Counsel for Ronald Lee is right in saying that the liquidators are attempting to use this section in an improper way as a means of aiding them in other litigations. In my view Ronald Lee has assisted the liquidators within his capacity and within the bounds of professional privilege.

Therefore, in the exercise of my discretion in this case, I shall discharge the order made by the Asst. Registrar under section 249 in respect of Ronald Lee. The liquidators must pay to Ronald Lee his costs of this application.

Motion allowed.

Solicitors: *G. Raman & Co.; Shook Lin & Bok.*

A MALAYSIAN REPORTS

SYED IBRAHIM BIN SYED ABDUL RAHMAN v. LIEW SU CHIN (F)

[F.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Syed Agil Barakbah F.JJ.) September 26 & December 14, 1983]
[Kuala Lumpur – Federal Court Civil Appeal No. 102 of 1983]

Land Law – Sale of property – Memorandum of Transfer executed – Transfer not registered – Agreement to sell land to another person – Caveat entered by person agreeing to buy property – Application to remove caveat – Judgment given in default – Application to set aside – R.H.C. 1980, O. 32 – National Land Code, s. 327.

In this case one Lim the registered proprietor of a piece of land had sold it to the husband of the respondent. The purchase price had been paid and he had begun to erect a house on the land. The memorandum of transfer had been executed in favour of the respondent, but it had not been registered. Subsequently Lim agreed to sell the land to the appellant, who made part-payment for the purchase and lodged a caveat against the property. When the respondent applied for registration of the transfer to her, she was advised to have the caveat removed. She thereupon applied for the caveat to be removed. The appellant was served with the summons but failed to appear at the hearing. Wan Hamzah J. made an order directing removal of the caveat. The appellant sought to have the said order set aside on the ground that the order was obtained in his absence. This application was refused in the High Court. The appellant appealed.

Held: (1) the learned judge had complete discretion under Order 32 R.H.C. to set aside the order so long as the application was made before the order was perfected;

(2) in this case the learned Judge was justified in holding that the appellant knew of the respondent's prior interest. The evidence that the appellant had prior notice was overwhelming. Therefore the learned judge was correct in coming to the conclusion that the caveat should not be restored.

Cases referred to:

(1) *Evans* v. *Bartlam* [1937] A.C. 473.
(2) *Haroon bin Guriaman* v. *Nik Mah binte Nik Mat & Anor.* [1951] M.L.J. 209, 211.
(3) *Karuppiah Chettiar* v. *Subramaniam* [1971] 2 M.L.J. 116.
(4) *Temenggong Securities Ltd. & Anor.* v. *Registrar of Titles, Johore & Ors.* [1974] 2 M.L.J. 45.
(5) *Macon* v. *Goh Hooi Yin* [1976] 2 M.L.J. 53.
(6) *Eng Mee Yong & Ors* v. *V. Letchumanan* [1979] 2 M.L.J. 212.

FEDERAL COURT.

Wong Chong Wah for the appellant.

Sri Ram (*Teh Boon Eng* with him) for the respondent.

Cur. Adv. Vult.